Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline	)	CC Docket Nos. 98-11, 98-26, 98-32
Services Offering Advanced	)	98-78, 98-91, 98-147
Telecommunications Capability	)	
	)	

REPLY COMMENTS OF WILLIAMS COMMUNICATIONS, INC.

Williams Communications, Inc. ("Williams"), pursuant to the FCC's Public Notice, 1/ hereby files its Reply to the comments submitted in the captioned matter. As a wholesale provider of "advanced telecommunications capability," Williams is vitally interested in the regulatory treatment of the digital subscriber line ("DSL"), packet-switching, and other technologies deployed to offer advanced services. Williams agrees with competitive entrants to the local market that the Commission correctly concluded that DSL-based services are either "local exchange" or "exchange access" services, and consequently that DSL is subject to the unbundling obligations of 47 U.S.C. § 251(c), 2/ notwithstanding U S WEST Inc.'s ("U S WEST") attempt to now argue otherwise.

1/ *Comments Requested in Connection with Court Remand of August 1998 Advanced Services Order*, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91 and 98-147, Public Notice, DA 99-1853 (released Sept. 9, 1999) ("Public Notice").

2/ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011 (1998) (*inter alia*, construing 47 U.S.C. § 251(c) in context of DSL offerings) ("*Advanced Services Order*").

I. INTRODUCTION

Williams is constructing a national fiber optic network utilizing ATM "packet-switching" as its core network architecture. By 2001, this system will comprise a 33,000-mile network which will provide "advanced telecommunications capability" as that term is defined in Section 706 of the Telecommunications Act of 1996. 3/ Williams is constructing not only a backbone network, but is also extending this network, with its advanced services capabilities, to end-user premises, making the relationship of xDSL and other packet-switched services subject to Section 251(c) a matter of vital importance to Williams. Given its position as exclusively a wholesale provider of such advanced telecommunications capability to other carriers, Williams holds a unique perspective on the issues raised in the Public Notice. 4/

U S WEST's mischaracterization of DSL as an "information access" service exempt from the requirements of Section 251(c) is unsupported and unavailing. As discussed below and in a number of parties' initial comments, DSL technology clearly can be used in provisioning local exchange and exchange access services. It therefore should be equally clear that U S WEST's sole argument here – that the Commission erred in concluding that DSL-based services are either

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3/ Codified at 47 U.S.C. § 157 nt.

4/ Comments of Williams Communications, Inc., CC Docket No. 98-147 (filed Sept. 25, 1998).

'telephone exchange service' or 'exchange access' subject to the obligations of Section 251(c) – is incorrect.

II. DSL-BASED SERVICES ARE SUBJECT TO THE UNBUNDLING REQUIREMENTS OF SECTION 251(c) OF THE ACT

U S WEST's and the other ILECs' arguments that DSL-based services are not subject to the requirements of Section 251(c) must fail, for three reasons. First, it is clear that DSL itself is a network technology that can be used to as an input to provide a variety of services, including telephone exchange and exchange access services. Second, most DSL-based services are either telephone exchange services or exchange access services (or both). Finally, carriers that are defined as "ILECs" under Sections 3(28), 3(16), 3(47) and 251(h) of the Act are subject to Section 251(c)(3) unbundling obligations with respect to all of their network facilities, 5/ regardless of the specific characterization of a particular service that they offer with such facilities.

Despite U S WEST's efforts to recharacterize DSL in hopes of evading its statutorily mandated unbundling obligations, there is no escaping the core truth that DSL is a *technology*, not a service. 6/ As MCI WorldCom and other commenters in this proceeding make abundantly clear, DSL can be used to provide several types

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5/ The unbundling obligation for particular facilities is also subject to Section 251(d)(2).

6/ MCI WorldCom at 3; *accord*, Sprint at 2 ("DSL is simply a loop that has been conditioned to permit the transmission of intelligence on a digital basis at a high rate of speed.").

of telecommunications services, including local exchange and exchange access. 7/ Indeed, DSL is merely another advancement in local network transmission technology that facilitates the offering of a host of services, and as such falls within the scope of Section 251(c).

The telecommunications services offered over DSL are local exchange service and exchange access service. DSL facilities link DSL customers with another point within the same local area, the classic definition of local telephone service (*i.e.*, telephone exchange or exchange access service – just by a different technology). 8/ It is clear that DSL is capable of being deployed to provide local service, intrastate access, or interstate access, including data and voice applications, 9/ including:

(i) connecting end-users to a local ISP point-of-presence,

7/ *See, e.g.*, MCI WorldCom at 5-6 ("Each member of the xDSL family of technologies (ADSL, HDSL, SDSL, etc.), has targeted uses, and those capabilities cannot logically be reduced to any one of its possible services.").

8/ For example, the FCC has held that GTE and other ILECs properly classified ADSL-based dedicated lines that give end-users high-speed access to Internet service providers as "exchange access" service in their interstate tariffs. *See GTE Tel. Operating Cos.*, CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998), *aff'd on recon.*, FCC 99-41 (released Feb. 26, 1999); *Bell Atlantic Tel. Cos., et al.*, CC Docket Nos. 98-168, et al., Memorandum Opinion and Order, 13 FCC Rcd 23667 (1998).

9/ *See, e.g.*, Joint CLECs at 8 ("DSL loops may be used by end users for a host of different broadband (*as well as voice*) applications") (emphasis added); Sprint at 3 ("DSL can, and shortly will be, used for voice services as well [by Sprint, and o]ther entities have also unveiled xDSL-based voice services."); *see also id.* ("ILECs' ADSL service can be used to connect a subscriber to an IXC's packet switched service [and HDSL] has been routinely deployed by ILECs for the past four years to provision T-1 lines, which [ ] can be used for either local exchange service or special access).

(ii) connecting end-users to corporate headquarters,

(iii) connecting end-users to an IXC point-of-presence to allow a company to link its non-local offices,

(iv) connecting end-users to a CLEC or DLEC point-of-presence, 10/

(v) connecting suppliers and vendors for e-commerce, and

(vi) connecting branches of financial or other institutions for high-speed communications, 11/

U S WEST's attempt to classify DSL-enabled services as "information access," and thereby exempt such services from the obligations of Section 251(c), completely overlooks the basic nature of DSL. It also relies heavily on the term "information access," which appears nowhere in the FCC's rules or in the substantive provisions of the Act in any meaningful way. U S WEST's attempts to limit DSL to the Internet access services that are at present the most commonly offered using that technology must therefore fail. 12/ As MCI WorldCom makes clear, the concept of "information access" arose in the context of the Modified Final Judgment, where it was unmistakably set forth as a type of exchange service. 13/ Simply applying the moniker "information access" cannot remove services using

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10/ MCI WorldCom at 10.

11/ Joint CLECs at 8; *see also* Wisconsin PSC at 3 ("xDSL is not exclusively Internet access-oriented. [T]he service can also function as a 'work-at-home' tool connecting employees to a local area or company data network.").

12/ U S WEST at 6-9; *contra*, MCI WorldCom at 12; *accord*, Joint CLECs at 8 ("U S WEST's efforts to narrow the scope of Advanced Services are unjustified.").

13/ MCI WorldCom at 15-16 (*citing U.S. v. AT&T*, 552 F.Supp. 131, Sections II.A., IV(I) (D.D.C. 1982) ("Modified Final Judgment")).

DSL technology from the statutorily defined "telephone exchange" or "exchange access" service categories. 14/

Thus, the FCC's statutory analysis of DSL in the *Advanced Services Order* is sound. 15/ Statutory analyses supporting this outcome have already been submitted in response to the instant Public Notice by, *inter alia*, Sprint, the Public Service Commission of Wisconsin ("Wisconsin PSC") and the Joint CLECs. 16/ Sprint, for example, is correct that, given its "broad definition, xDSL service, even when used simply as special access to connect to an unregulated ISP, is used to 'originate and terminate a telecommunications service' and thus comes within the ambit of Section 3(47)(B)." 17/ Likewise, the Wisconsin PSC is correct that:

> [W]hen a DSL subscriber routes packets to an ISP provider or corporate LAN, the subscriber is "specifying" a transmission ("call") between his or her location and another point defined to be local to the DSL provider's service public. The information sent and received is of the "customer's own choosing." The customer is a member of the local "public" that can buy transmission capability to a point in a provider-defined local

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14/ *Accord* Sprint at 2 ("U S WEST's entire argument before the court rested on the slender reed that the only use of the ILECs' xDSL services is to connect ILEC subscribers with Internet service providers, thus putting the service outside the ambit of 'telephone exchange service'") (citation omitted).

15/ 13 FCC Rcd at 24029-31, ¶¶ 35-37, 24034-35, ¶¶ 46-49.

16/ Sprint at 4-6; Wisconsin PSC at Sec. I; Joint CLECs at 10-14. The Joint CLECs include Advanced TeleCom Group, Inc., Allegiance Telecom, Inc., e.spire Communications, Inc., Intermedia Communications, Inc., NEXTLINK Communications, Inc., and Winstar Communications, Inc.

17/ Sprint at 5 (*quoting* 47 U.S.C. § 153(3)(47)) (footnote omitted).

> area. Thus the definitions of both "telecommunications" and "telecommunications service" are satisfied. 18/

These statutory analyses and similar discussions in other comments filed on the Public Notice amply demonstrate that the FCC was correct in determining in the *Advanced Services Order* that DSL technology is subject to the requirements of Section 251(c).

Finally, in response to the fourth question in the Public Notice, Williams submits that the obligations of Section 251(c) apply to all *carriers* that are defined as ILECs under Section 251(h). 19/ In particular, the language of Section 251(c)(3) makes clear that ILECs must make available any network element (defined in Section 3(29) as a facility or equipment used in the provision of a telecommunications service) that a requesting carrier seeks to use to provide a telecommunications service. 20/ It makes no difference under the statute whether the requesting carrier (or the ILEC) uses that network element to provide "telephone exchange," "exchange access," or some other type of telecommunications service. Even U S WEST must concede that "DSL and other advanced services constitute telecommunications services." 21/ Thus, regardless of whether DSL-based services are "telephone exchange," "exchange access," or some other type of

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18/ Wisconsin PSC at 6 (construing 47 U.S.C. §§ 153(43) and (46)).

19/ Section 251(h) defines which "local exchange carriers" are "incumbent." In turn, Section 3(26) defines a "local exchange carrier" as a provider of "telephone exchange" and "exchange access" services, defined in Sections 3(47) and (16).

20/ This obligation is qualified by the provisions in Section 251(d)(2).

21/ U S WEST at 5.

telecommunications service, it is clear that DSL is subject to the requirements of Section 251(c). 22/

III. CONCLUSION

For the foregoing reasons, the FCC should reaffirm its conclusion that DSL facilities, which can be used to provide, among other services, both telephone exchange service and exchange access service, are subject to Section 251(c) of the Act, which requires ILECs to make available DSL-related network elements, functionalities and services to competitive providers.

Respectfully submitted

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22/ *Accord*, Joint CLECs at 25-27.